

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2008-173-W**

**July 31, 2008**

Application of Jacabb Utilities, LLC for Approval )	
of an Establishment of Water Rates and Charges )	
and Approval of Agreement for Water Services )	<b>SETTLEMENT AGREEMENT</b>
with Pointe West, Incorporated to Serve )	
Highpointe Development in Oconee County )	
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This Settlement Agreement is made by and between the South Carolina Office of Regulatory Staff (“ORS”) and Jacabb Utilities, LLC (“Jacabb,” “the Company,” or “the Applicant”) (together referred to as the “Parties” or sometimes individually as “Party”).

WHEREAS, the Company prepared and filed an Application on April 23, 2008 for approval of an establishment of rates and charges for water service provided to residential and commercial customers (“Amended Application”) and for approval of an agreement for water services with Pointe West, Incorporated to serve Highpointe Development in Oconee County;

WHEREAS, the above-captioned proceeding has been established by the South Carolina Public Service Commission (“Commission”) pursuant to the procedure established in S.C. Code Ann. § 58-5-240 (Supp. 2007) and 26 S.C. Code Ann. Regs. 103-712.4.B (2007);

WHEREAS, Jacabb seeks the approval for the establishment of water rates;

WHEREAS, Jacabb's first water customers will be the residents of Highpointe Development in Oconee County;

WHEREAS, Highpointe Development is being constructed and will consist of 333 multi-family units with occupancy expected to occur no earlier than August 2008;

WHEREAS, Jacabb possesses a certificate of public convenience and necessity granted on October 31, 2005 in Order No. 2005-617 to provide sewer services in the same area for which it now requests to provide water services;

WHEREAS, Jacabb's request to establish water rates does not require a determination of the entire rate structure and overall rate of return for Jacabb;

WHEREAS, ORS has examined the books and records of the Company relative to the matters raised in the Amended Application;

WHEREAS, the Parties have varying legal positions regarding the issues in this case;

WHEREAS, the Parties have engaged in discussions to determine if a settlement of the issues would be in their best interests and in the case of ORS, in the public interest;

WHEREAS, following those discussions the Company has determined that its interests and ORS has determined that the public interest would be best served by stipulating to a comprehensive settlement of all issues pending in the above-captioned case under the terms and conditions set forth herein;

NOW, THEREFORE, the Parties hereby stipulate and agree to the following terms, which, if adopted by the Commission in its Order on the merits of this proceeding, will result in rates and terms and conditions of water service which are adequate, just, reasonable,

nondiscriminatory, and supported by the evidence of record of this proceeding, and which will allow the Company the opportunity to obtain a reasonable operating margin.

1. The Parties stipulate and agree that the exhibits prepared by ORS and attached to the settlement testimony of Elizabeth Ford fairly and reasonably set forth the Company's revenue requirement and operating margin.

2. If a hearing is held in this matter, the Parties stipulate and agree to include in the hearing record of this case the direct testimony of Stephen R. Goldie and the settlement testimony of Elizabeth Ford, including all exhibits attached to said pre-filed testimonies without objection, change, or amendment.

3. The Parties stipulate and agree that the rate schedule, entitled Exhibit MEF-4 to the settlement testimony of Elizabeth Ford, containing the rates and charges and terms and conditions of service, is fair, just, and reasonable. The Parties further stipulate and agree that the rates contained in said rate schedule are reasonably designed to allow the Company to provide service to its water customers at rates and terms and conditions of service that are fair, just and reasonable and provides the opportunity to recover the revenue required to earn a fair operating margin.

4. In its Amended Application, the Company requested total operating revenues of \$216,970.32. As a compromise to their respective positions, the Parties stipulate and agree to total operating revenues of \$31,409. This difference is due to the removal of pass through water supply revenues erroneously included in Jacabb's \$216,970.32 revenue request.<sup>1</sup>

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<sup>1</sup> In addition, Jacabb's Amended Application labels revenues according to the following three categories: Phase I, Phase II, and Phase III. According to Steve Goldie's testimony on page 7, lines 17 - 20, Jacabb included Phase I and Phase II for illustrative purposes only.

5. Jacabb and ORS recognize the value of resolving this proceeding by settlement rather than by litigation and therefore stipulate and agree that an operating margin of 8.66% is just and reasonable.

6. The Parties acknowledge that rate case expenses are entirely excluded from this proceeding and the calculation of rates.<sup>2</sup>

7. The Parties further stipulate and agree that this Settlement Agreement conclusively demonstrates the following: (i) the operating margin of 8.66% and an ability to earn annual operating revenues of \$31,409 is fair, just, and reasonable when considered as a part of this Settlement Agreement in its entirety; and (ii) Jacabb's rates as set forth in the settlement testimony of Elizabeth Ford in Exhibit MEF-2 and MEF-4 are fairly designed to equitably and reasonably recover the revenue requirement and are just and reasonable and should be adopted by the Commission for service rendered by the Company on and after the date approved by the Commission via Commission Order.

8. The Company agrees to file with the Commission a performance bond for water service in the amount of \$100,000 before operation begins.

9. As required by the Commission, the Company provided the developer a copy of the Notice of Filing containing the proposed rates and published the Notice of Filing in the Daily Journal and Daily Messenger circulated in Oconee and Pickens Counties in South Carolina.

10. Jacabb agrees not to charge for any water services until an Order is issued by the Commission allowing for such charges.

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<sup>2</sup> The rate case expenses are being paid by the developer of the Highpointe Development in Oconee County pursuant to a contract between the developer and Jacabb.

11. The Company agrees to utilize the tariff set forth in Exhibit MEF-4 to the settlement testimony of Elizabeth Ford. Exhibit MEF-4 does not increase rates from those set forth in the Amended Application, but more clearly sets forth and describes the rates for customers.

12. The Company agrees to maintain its books and records in accordance with the National Association of Regulatory Utility Commissioners ("NARUC") Uniform Systems of Accounts.

13. The Parties agree that Jacabb may pass to customers, without markup, any rate increases it incurs pursuant to its water supply contract with Seneca Light and Water ("the pass through") or Seneca Light and Water's successor. Jacabb shall provide the Commission satisfactory proof of the basis for the adjustment and provide notice to customers of any increases in the pass through.

14. Notwithstanding paragraph 13 above, Jacabb agrees to pass through the Seneca Light and Water master meter fee by prorating the fee among 333 units as if Highpointe Development were fully built and will further prorate the fee as any further units or customers are added.

15. The Company agrees to file necessary financial information with ORS for annual reporting and/or gross receipts reporting and to remit fees as appropriate and on a timely basis.

16. ORS does not oppose Jacabb's request for approval of the agreement for water services with Pointe West, Inc. to serve Highpointe Development in Oconee County. The agreement is attached as Exhibit B to the Amended Application.

17. ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10(B) (added by Act 175). S.C. Code § 58-4-10(B)(1) through (3) reads in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the agreement reached between the Parties serves the public interest as defined above. The terms of this Settlement Agreement balance the concerns of the using public while preserving the financial integrity of the Company. ORS also believes the Settlement Agreement promotes economic development within the State of South Carolina. The Parties stipulate and agree to these findings.

18. The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of the above-captioned proceeding and to take no action inconsistent with its adoption by the Commission. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein.

19. The Parties agree not to introduce or use this Settlement Agreement to constrain, inhibit, impair, or prejudice the other party in other proceedings. If the Commission should

decline to approve the agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement without penalty or obligation.

20. This Settlement Agreement shall be interpreted according to South Carolina law.

21. The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and e-mail signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

[SIGNATURE PAGES TO FOLLOW]

WE AGREE:

**Representing the South Carolina Office of Regulatory Staff**



Shannon Bowyer Hudson, Esquire

**South Carolina Office of Regulatory Staff**

1441 Main Street, Suite 300

Columbia, SC 29201

Phone: (803) 737-0889

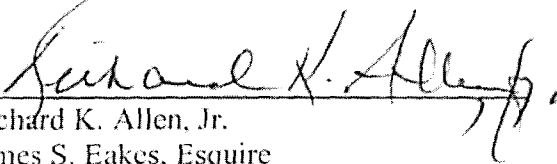
Fax: (803) 737-0895

E-mail: [shudson@regstaff.sc.gov](mailto:shudson@regstaff.sc.gov)



WE AGREE:

Representing <sup>2</sup>Jacabb Utilities, LLC

A handwritten signature in cursive script, appearing to read "Richard K. Allen, Jr.", is written over a horizontal line.

Richard K. Allen, Jr.  
James S. Eakes, Esquire  
Allen and Eakes  
P.O. Box 1405  
Anderson, SC 29622  
Phone: (864) 224-1681  
Fax: (864) 231-8411  
E-mail: [stveakes@bellsouth.net](mailto:stveakes@bellsouth.net)

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**OF SOUTH CAROLINA**  
**DOCKET NO. 2008-173-W**


IN RE:

**Application of Jacabb Utilities, LLC for  
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and Charges and Approval of Agreement for  
Water Services with Pointe West,  
Incorporated to Serve Highpointe  
Development in Oconee County**

**CERTIFICATE OF  
SERVICE**

This is to certify that I, Pamela J. McMullan, have this date served one (1) copy of the **SETTLEMENT AGREEMENT** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

James S. Eakes, Esquire  
Allen & Eakes  
Post Office Box 1405  
Anderson, SC, 29622

  
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Pamela J. McMullan

July 31, 2008  
Columbia, South Carolina